

WATER ALLOCATION PROGRAM DEVELOPMENT
Meeting Proceedings
Thursday, May 29, 2003

I. WELOCME

Ms. Kathleen Crawley, Supervising Planner for the Water Resources Board, welcomed participants. She summarized the agenda for the day noting that this is the ninth full committee meeting. She stated that the group will be moving into next phase over the summer and into the fall as the committees begin producing written materials for discussion and inclusion in a final document that the WAPAC will forward to the Water Resources Board for their consideration December 18, 2003. Draft reports/outlines are targeted for the end of June.

II. COMMITTEE REPORTS/PRIORITY USES COMMITTEE PRESENTATION

Ms. Crawley introduced the first agenda item-committee reports and a presentation by the Priority Uses Committee:

COMMITTEE REPORTS:

Water Use Reporting- Ms. Ann Veeger stated that the committee was reviewing the data we currently collect, how it is reported and used. In assessing the need for a reporting program, the committee is reviewing:

- (1) What data is reported and what data is estimated
- (2) How to use the data
- (3) Whether we need a reporting system to address data needs

The committee has reviewed USGS data and is currently comparing actual metered data to coefficients to assess potential “error bars” and identify any potential data that should be collected rather than estimated. She reported that Mr. Al Bettencourt is compiling agricultural data that is already reported.

Streamflow-Ms. Good and Ms. Crawley reviewed the work of the committee. They met twice in April and distributed and requested technical review of a draft white paper for a Rhode Island streamflow standard (modified ABF). The committee has hosted several guest speakers offering in depth review of various flow standard-setting techniques. Dave Armstrong, USGS reviewed various techniques for habitat assessments. Phil Zarriello, USGS reviewed the management options analyzed for the Ipswich River and Ralph Abele, Instream Flow Coordinator for the USEPA reviewed the Connecticut recommendations in more detail. He had previously presented an overview of efforts in other New England states.

Water Rights- Ms. Crawley introduced Mr. John Garry from the RI Attorney General’s office stating that he would be leading the efforts of this committee over the summer for Mr. Dale Thompson, Roger Williams University, while he is on leave. Mr. Garry credited Mr. Thompson for providing an excellent road map for the committee’s work over the summer. The goal is to integrate the four areas into a recommended rights structure by the end of the summer. He stated that the committee has divided into four working subgroups:

1. Agricultural water rights issues and interpretation of the allocation statute regarding agriculture (RIGL 46-15-7.1(b)(5).
2. Drought Management- water rights/regulatory structure during drought

3. Takings- legal research into what Fifth Amendment issues might arise in a new scheme.
4. Groundwater- a clarification of groundwater rights

Out of Basin Transfer- Mr. Meyer summarized the progress of the committee. This month, Ms. Michele Drury, Massachusetts DEM, reviewed the state's Interbasin Transfer Act, approval procedures and requirements. The Act divides the state into 28 watersheds and establishes performance-based standards. The committee will continue current efforts-mapping transfers and assessing the issues and will explore performance-based standards (what already exists/what should be developed?).

Water Rates- Ms. Bondarevskis stated that the committee's efforts continue to:

1. Collect and analyze existing rates for the major water suppliers in a spreadsheet
2. Consider the full cost of water and wastewater and establish price signals that increase the value of water.
3. Analyze the potential for a demand side management fee similar to the electric or gas industry as a source of funding for the WAPAC recommendations.
4. Explore alternative rates to promote efficient use when supply is at risk, such as drought, seasonal rates

Education- Ms. Whitehouse said that the committee has successfully completed an introductory piece with the help of Chip Young, which was sent on a list serve and resulted in several new participants including Michele Drury from MA. DEM. Peter Lord has designated an intern to work on the allocation. They will continue over the summer to lay the foundation- to educate the public about the importance of water and water allocation. She stated that a media plan is needed as well as funding to develop the plan. As the committees prepare reports and recommendations, their focus will shift to assist the committees and the full WAPAC with their messages. The committee continues to look for writers.

Impact- Work continues to identify the social, economic, and environmental impacts related to allocation. They had a presentation in the past from the Gund Institute about methods for quantifying social and environmental impacts related to water. They have assembled data regarding safe yield from the Water System Supply Management Plans in the Blackstone and Wood-Pawcatuck basins. Ms. Julie Lundgren reviewed the work of the committee related to developing a protocol for establishing critical/priority habitat areas. Their work has focused on the two pilot basins first. In the Blackstone, there are concerns for the headwater streams and major issues are flow/timing and quantity. Key priorities in the Wood-Pawcatuck include a portion of the Queen and Upper Wood rivers. She stressed that it is extremely difficult to narrow priorities. It is an exceptional watershed, regional and national standards with high quality forests and streams. On a large-scale analysis conducted by the Nature Conservancy from Southern Maine to Pennsylvania, the Wood-Pawcatuck is considered exceptional.

Water/Wastewater Integration- Mr. Mariscal stated that their primary goal is to heighten awareness of business and water users to reuse wastewater, gray water or storm water as a substitute for potable water. Challenges include logistics and conveyance. The committee is reviewing success stories, such as Cranston (industry) and Jamestown

(golf course) and South Providence (storm water “green roof”). They have developed a draft brochure publicizing reuse opportunities and a meeting is scheduled with URI on June 23 to further explore reuse and demonstration projects related to wastewater reuse.

Joint Advocacy and Funding-Ms. Crawley explained that this committee, like the education committee, is overarching and will become active in developing strategies to advocate for and fund recommendations.

PRESENTATION BY THE PRIORITY USES COMMITTEE:

Mr. John O’Brien, Chief, Statewide Planning Program presented the work of the committee to date. Their goal was to develop a set of dynamic criteria that can be used to guide the state and local communities in implementing an allocation program. They reviewed existing RI statutes and policy that establish priorities and those of other states, noting that there was less relevance for Western states. Their effort was also informed by a review of pertinent sections of the Model Riparian Code. The major assumption and committee recommendations are summarized below.

Criteria (for establishing priorities) will adhere to the “Guiding Principles” adopted by the Water Allocation Program Advisory Committee

Relying heavily upon the Model Riparian Code, the Subcommittee recommends that the Advisory Committee adopt the following:(1) Water is to be allocated by permits up to the safe yield or other applicable limit of allocation of the resource according to the following priorities: (a) Direct human consumption or sanitation in so far as necessary for human survival and health; (b) Uses necessary for the survival or health of livestock and to preserve crops or physical plant and equipment from physical damage or loss in so far as it is reasonable to continue such activities in relation to particular water sources; and (c) Other uses in such a manner as to maximize employment and economic benefits within the overall goal of sustainable development as set forth in the comprehensive water plan. Within each preference category, uses are to be preferred that maximize the reasonable use of water. Applications to renew a permit shall be evaluated by the same criteria applicable to an original application, except that renewals shall be favored over competing applications for new withdrawals if the public interest is served equally by the competing water uses after giving consideration to the prior investment pursuant to a valid water right in related facilities as a factor in determining the public interest. When the waters available from a particular water source are insufficient to satisfy all lawful demands upon that water source, permits shall be revoked according to the reverse order of priority set for granting of permits and in accord with existing policy and procedures.

Questions/Discussion

There was discussion about the three priorities and whether more than three should be specified rather than all uses being subordinate, subject to economic benefit and sustainable development (item c). Mr. O’Brien explained that this is envisioned as a planning tool to assist in filling out the detail that will be required later statewide and locally. It is not intended to be an exhaustive list, but rather a set of dynamic criteria that can be applied by the various “regulatory” authorities. It is assumed that priorities will be more specific in locally defined areas.

Mr. Ward stated that an obvious omission is reference to the environment as a priority use. Mr. Combs added that there was a lot of discussion about the environment and how to convey that some things were more important than others while clearly identifying a hierarchy and striking an appropriate balance. This is how the economic and environmental goals became more explicit in the

third category (item c). There was also a lot of discussion about the concept of sustainability to protect the resource and the environment. The term “safe yield” or “other applicable limit of allocation of the resource” is intended to guide this process, as is the work of the stream flow committee in establishing flow standards. Mr. Dzykewicz added that environmental considerations will be taken into account to establish safe yield and water is then allocated to safe yield. Mr. Mendoza stated that this is an important point to include in the presentation along with reference to the Clean Water Act. Mr. Dzykewicz stated that the committees need a definition of safe yield and streamflow. Mr. Donahue stated that the effort should not be about allocating what is left but what is there to begin with. He stated that he does not agree that the environment comes before all other uses. The question becomes how and where it fits. He agreed with Mr. Ward that there should be explicit reference in the assumptions as to where the environment fits into the preferences. Ms. Good noted that safe yield may not consider environmental needs but that they should be calculated into future safe yield calculations and must follow existing state and federal laws. Finally, in response to committee discussion, the priorities are stated to be preferences, not exclusive uses, meaning that one use/category does not necessarily have the right to exhaust all available supply to the exclusion of others based upon the proposed preferences. The word *reasonable* also applies the notion of conservation to each category. Mr. Dzykewicz also stated that assumptions are based on existing law but that there may be recommendations to change the law.

Mr. Al Bettencourt, Rhode Island Farm Bureau stated, for the record, that he was not in favor of a permitting system and felt that there is enough water available. He was responsible for changing the phrase to read, “a registration and water withdrawal permitting system *may* be instituted.”

There was also considerable discussion about the need to conserve water. Mr. Mariscal stressed the need for sound and efficient management of public water supply, established incentives to conserve, facilitating water reuse **before** allocation. There was also recognition of a plan for conserving water domestically. The domestic use category is significant statewide. Yet, a relatively small amount is attributable to human consumption. Mr. Meyer stated in the Kingston Water District consumption is about 1% and bathing water is approximately 2%.

III. ADOPTION OF OVERARCHING MISSION AND GUIDING PRINCIPLES

Ms. Crawley read a letter that had been sent by Rhode Island Department of Environmental Management Director Jan Reitsma, urging the committee to adopt the guiding principles as follows:

As you know, I will unfortunately be unable to attend the next meeting of the Water Allocation Program Advisory Committee. I would like, however, to comment on the latest iteration of the mission statement and urge its speedy approval. In my opinion, further debate is not likely to either enhance the advisory process or enchant its participants.

The mission statement is meant to provide guidance for the process, not to be its final product. It is neither necessary nor appropriate to try and have this statement reflect and balance all the fine points of the various perspectives the stakeholders bring to the process. Instead, it should acknowledge that there are different perspectives and commit us to a good faith effort to balance interests and reconcile differences to the extent possible. Above all, it should make each stakeholder feel that the process will be fair and inclusive. That requires a rather short and broad statement, not a litany of specific provisions that reflect the outcomes some hope the process will produce, or not produce.

In my view, the current draft statement is adequate (as I believe earlier versions were). I am concerned

that attempts to make it more than adequate will be counterproductive, and only of interest to those who seek to dominate the debate at the expense, if not exclusion, of others. Time is of the essence and the mission itself a lot more important than the mission statement. We're all in this together, so let's act that way and get on with it.

Motion by Mr. Stephen Donahue, Second by Henry Meyer to approve the mission and guiding principles. Discussion of the motion resulted in two amendments as follows:

1. Move the statement of purpose for the WAPAC to the top of the document.
2. In the statement of purpose, add the word "following" to the to the phrase *consistent with the overall mission and guiding principles* to read *consistent with the following overall mission and guiding principles*.

The motion, as amended was approved unanimously.

IV. WORK PLAN DEVELOPMENT AND TIMELINE

Ms. Crawley summarized the timeline and goals for developing working drafts in the committees, moving those drafts through the full WAPAC with the goal of presenting recommendations for consideration of the Water Resources Board at their meeting of December 18, 2003. This would require drafts/annotated outlines by the end of June, committee reports by August, deliberation and decision-making by the full WAPAC in September and October and forwarding of the recommendations in the November meeting. Mr. Meyer emphasized the need to start writing. Mr. Combs expressed a desire for more guidance and felt that this would be important in the next meeting rather than waiting for all the committee reports first. He was concerned about making the wrong assumptions. Mr. Sams agreed to prepare a planning document that would facilitate a discussion in the June meeting emphasizing that the direction would be broad and that the process promotes leadership from the committees. There was discussion about whether to skip either the July or the August meeting of the full committee. Mr. Meyer stated that these two months were critical in terms of producing the subcommittee reports and that time was best invested in the committees. Ms. Good suggested that the scheduled meetings should still be held and those wishing to attend to hear the detailed presentations could do so while still emphasizing the work in the committees. The group agreed to continue the summer meetings as scheduled.

Respectfully Submitted,

Kathleen Crawley
Supervising Planner

Attachment A

Adopted Purpose Statement, Mission and Guiding Principles

Water Allocation Program Advisory Committee

Statement of Purpose WAPAC

Develop a set of recommendations for a comprehensive, statewide water allocation program through the subcommittee process for consideration of the Rhode Island Water Resources Board, consistent with the following overall mission and guiding principles.

Overall Mission

Manage the amounts, purposes, timing, locations, rates, and other characteristics of fresh water withdrawals from ground or surface waters to:

Protect the health, safety, and general welfare of the people of the state of Rhode Island

Provide for the fair and equitable allocation of the water resource among users and uses

Promote the continued existence, diversity, and health of the state's native wildlife and plant species and communities

Insure that long-range rather than short-range considerations remain uppermost

Overall Guiding Principles

Management of fresh water resources of the state should be based on:

- Adequate data in order to determine the capabilities of the state's water resources to support various uses and users and the quantities of water needed for these uses
- Long-range planning for and conservation of these resources;
- Optimizing conservation, water reuse and recycling;
- Fairness, equitable distribution, and consideration for all human uses;
- Matching the use of water with the quality of water necessary for each use, giving priority to those uses that require the highest quality water;
- Maintenance of native aquatic and terrestrial animal and plant species, populations, and communities and statewide diversity;
- Continued upholding of and improvement in the quality of the environment and especially of the water resource itself;
- Careful integration with all other social, economic, and environmental objectives, programs, and plans of the state;
- Allocation of water resources in a manner that provides for agricultural sustainability while recognizing the importance of other water uses.